Smith v. The Abandoned Vessel Doc. 77

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NATHAN SMITH **Plaintiff**	§ § §	
V.	§	**CIVIL ACTION H-07-784**
THE ABANDONED VESSEL, ***In rem*** **Defendant.**	§ § § §	

ORDER ON MOTION FOR ENTRY OF DEFAULT

Killeen & Stern, Defendant, and Nathan Smith, Plaintiff, have announced to the Court that agreement has been reached on Plaintiff's Motion for Entry of Default Judgment. Based on the agreement of the parties, it is ORDERED:

1. Killeen & Stern irrevocably RELEASE Nathan Smith from any and all obligations under the Contract For Legal Services between Killeen & Stern PC and Nathan Smith dated February 5, 2007, attached as Exhibit A;

2. Killeen & Stern WAIVE all interests and rights of any kind and nature under the contract between Killeen & Stern PC and

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Nathan Smith dated February 5, 2007, attached as Exhibit A.

Signed at Houston, Texas this 29 day of December 2008.

United States District Judge

AGREED AND APPROVED

KILLEEN & STERN
ROBERT J. KILLEEN, JR.
By:

NATHAN SMITH

By: RICHARD SCHWARTZ
Attorneys for Plaintiff, Nathan Smith

Killeen & Stern, PC
Nathan Smith
FEB 05 2007
C/M# 1600
Atty

CONTRACT FOR LEGAL SERVICI

COUNTY OF ____________________

STATE OF Texas

The undersigned, hereinafter referred to as client(s) does/do hereby employ and retain the services of KILLEEN & STERN, PC, as client(s)' attorney(s), to protect their interests, as they may appear, to investigate, prosecute and collect, whether by suit, compromise or otherwise, client(s)' claim(s) relating to the salvage/ownership of an unidentified wrecked and abandoned [redacted] ship located in or near Refugio County, Texas, which claim was first attempted to be asserted by client(s) in proper person in the United States District Court for the Central District of California in Case No. CV-06-8045 on or about January 12, 2007.

Killeen & Stern, PC, accepts this employment and in consideration of the services rendered and to be rendered, client(s) does/do hereby agree to pay fees and costs as follows:

Thirty three and one-third percent (33 1/3%) of amounts up to $100,000,000.00
Twenty five percent (25%) of amounts $100,000,00.01 up to $1,000,000,000.00
Fifteen percent (15%) of amounts $1,000,000,000.01 up to $3,000,000,000.00
Ten percent (10%) of all amounts greater than $3,000,000,000.00

of the gross recovery whether salvage and/or ownership rights are determined before suit has been filed, or whether such rights are determined after suit is filed.

For the purposes of this Contract, the gross recovery means all monies or things of value, including any attorney's fees, forgiveness of indebtedness, the return of assets and/or other non-monetary consideration, without regard to any expenses attributed to the recovery. Client(s) authorizes Killeen & Stern, PC, to require any settlement check or funds to be made payable jointly to the client(s) and the firm.

Client(s) shall advance any and all expenses to be incurred by Killeen & Stern, PC, that the firm deem necessary and proper to its representation of client(s). These expenses include, but are not limited to:

(a) Court filing fees;
(b) Transportation expenses;
(c) Expert fees;
(d) Deposition transcript fees;
(e) Deposition fees payable to witnesses pursuant to the applicable Code of Civil Procedure;
(f) Filing fees/search fees to be paid to various governmental agencies as their fee schedules may require;

(g) Long distance telephone charges;
(h) Messenger and courier services;
(i) Investigative fees;
(j) Postage;
(k) Photocopying; and
(l) Parking, tolls and travel expenses not specifically referenced above.

The total amount of these charges will be deducted from client(s)' portion of any recovery **to the extent not prepaid by client(s)**.

Killeen & Stern, PC, agrees that it will not incur any costs other than necessary initial court filing fees without the express consent of client(s). Killeen & Stern, PC, reserves the right to withdraw from this Contract of representation in the event that client(s) do not prepay expenses as required by this contract. However, Killeen & Stern's failure to insist on this provision of the Contract shall not result in a waiver of this provision.

Client(s) hereby warrant(s) that he/they are the sole owners of the claim. To secure the performance of client(s)' obligations as set forth in this agreement, client(s) hereby transfers and assigns to Killeen & Stern, PC an undivided interest in the claim, such interest being equivalent to the amount or percentage that client(s), by this agreement, promise(s) to pay for the services of Killeen & Stern, PC.

Client(s) agree(s) that he/they shall not assign in whole or in part or otherwise grant any lien against the claim or the proceeds from it, other than the assignment granted by the preceding paragraph, without the prior written consent of Killeen & Stern, PC which consent shall not be unreasonably withheld.

The Firm is authorized to take all steps deemed by it to be necessary and appropriate to obtain a satisfactory result for Client, including, but not limited to, securing a complete investigation of the claim, instituting legal proceedings, employing expert witnesses and associate counsel, entering into settlement negotiations, preparing settlement packages, preparing for and proceeding to trial, and discontinuing the claim or litigation.

Client(s) gives the Firm a power of attorney to execute all documents on behalf of the Client(s) in connection with the Claim. The Firm is authorized to sign all documents, including, but not limited to, pleadings, releases, compromise settlement agreements, agreed judgments or orders of dismissal, indemnity agreements, and settlement checks, drafts, or negotiable instruments.

Client(s) shall keep the Firm advised of their current telephone number and address at all times. Client(s) shall appear upon reasonable notice at all depositions and court appearances and shall comply with the requests of the Firm in connection with the preparation and presentation of the Claim.

Upon signing this Agreement, Client(s) agrees to cease all communications with the opposing party, opposing counsel, insurance adjusters and claim representatives, and any other third parties regarding the Claim unless first advised by the Firm to make the communication.

Client(s) has the right to discharge the Firm at any time. In the event that the Firm has not otherwise materially breached this Agreement, if Client(s) terminates this Agreement without the written consent of the Firm, then the Firm shall have the right to terminate all of its remaining rights, duties and obligations hereunder. **However, Client(s) agrees that they must pay the Firm for expenses incurred through the date of discharge and, unless the Firm's discharge is determined to be for good cause by a court of competent jurisdiction, the Firm shall still be entitled to the percentage of Client(s)' ultimate recovery described above.**

Should it become the opinion of the Firm at any time that Client(s)' cause of action lacks merit (for example, because of inability to verify Client(s)' claims through witnesses or because of adverse developments in the law), then the Firm shall have the option to terminate this Agreement and be relieved of any obligation to participate in any pending litigation involving the Claim. The Firm may also withdraw from representing Client(s) in the event of Client(s)' failure to cooperate with the Firm in a reasonable manner, personal disharmony, disagreement with the Firm's work, the Firm's determination that Client(s)' claim is unlikely to result in a economically viable recovery, or other reasons permissible under Texas State Bar Rules or judicial regulations. In the event the Firm elects to exercise its right to discontinue legal service, it shall do so only upon giving Client(s) prior written notice of its intention and otherwise endeavoring to minimize the possibility of harm to assure that Client(s)' legal matter will not be prejudiced.

Client(s) understands that the Firm may, at its expense, contract with other attorneys for the performance of certain work for the Client(s) and that the Firm may pay part of the fees it receives under this Agreement to such attorneys for the services rendered by them; provided, however, that such fees shall in no event reduce the amount(s) which would otherwise be payable or due to Client(s) in the absence of this paragraph.

Client(s) acknowledges that they have read this Agreement and have made sufficient investigation and inquiry to determine that this Agreement is fair and reasonable to Client(s) and that this Agreement was the product of arm's length negotiation with the Firm. Client(s) further acknowledges that the Firm is being employed voluntarily and without solicitation by the Firm. Client(s) also acknowledges that they are only represented by the Firm regarding the matters outlined in this Agreement.

Client(s) acknowledges that the solicited the Killeen & Stern, PC in Houston, Texas, to engage the services of the firm to pursue the Claim on their behalf and that the legal services contemplated by this Agreement will be rendered, in whole or in substantial part, in the State of Texas. Therefore, Client agrees that should any dispute between the Firm and Client arises out of, in connection with, or in relation to the interpretation, performance or breach of this Agreement, including any claim of legal malpractice, Client will submit to resolving the dispute in Houston, Texas.

NOTICE TO CLIENT(S)

The State Bar of Texas requires that we provide the following information:

The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar Office of General Counsel will provide you with information about how to file a complaint. For more information, call toll free 1-800-932-1900.

I/we have read over and fully understand the above contract.

CLIENT(S):

Nathan Smith

Date: 1/30/07

Date: 1/30/07

KILLEEN & STERN, PC

Robert J. Killeen, Jr.

Date: 2/5/07